Plaza La Reina Hotel Venture d/b/a the Sheraton Plaza La Reina Hotel *and* Culinary Workers and Bartenders Union, Local 814, Hotel Employees and Restaurant Employees International Union, AFL-CIO. Case 31-CA-12866

March 30, 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 27 September 1983 Administrative Law Judge George Christensen issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Charging Party also filed exceptions and a supporting brief. The Respondent filed an answering brief to the exceptions of the General Counsel and the Charging Party.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On July 12, 1983, I conducted a hearing at Los Angeles, California, to try issues raised by a complaint issued on April 7, 1983, based on a charge filed by Culinary Workers and Bartenders Union Local 814, Hotel Employees and Restaurant employees International Union, AFL-CIO on February 17, 1983.

The complaint alleged the Sheraton Plaza La Reina Hotel (the Hotel) violated Section 8(a)(1) of the National Labor Relations Act, as amended (the Act) during December 1982[1] by interrogating employees regarding their union activities, sympathies, and desires, creating the impression it was maintaining a surveillance of its employees' union activities and threatening employees with a loss of benefits if they selected the Union as their collective-bargaining representative.

The Hotel denied committing the acts alleged and, in any event, violating the Act.

The issues are whether the Hotel committed the acts alleged and, if so, whether it thereby violated the Act.

The parties appeared at the hearing by counsel and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Briefs were filed by the General Counsel, Local 814, and the Hotel.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs and analysis, I enter the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the answer admitted, and I find at all pertinent times the Hotel was an employer engaged in commerce in a business affecting commerce, and Local 814 was a labor organization within the meaning of Section 2 of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

1. The organizing campaign

In September, Local 814 launched a campaign to organize certain of the Hotel's employees.[2] By mid-December, its organizers[3] had contacted a substantial number of the Hotel's restaurant employees, though they still had not solicited employee signatures to cards authorizing Local 814 to represent them for the purpose of bargaining collectively with the Hotel concerning their wages, rates of pay, hours, and working conditions.

2. The alleged Hughes' interrogations

Employee John Karas, a waiter, testified on a few occasions during the fall that Executive Chef Charles Hughes[4] joined a group of employees which included Karas during breaks; that the group discussed various subjects; and that on two occasions Hughes asked how the union organizing campaign was going, "in a joking manner." Hughes conceded he joined in group conversations during breaktimes during the period in question, but denied he asked about the union campaign.

While I credit Karas' testimony, I find by the remark in question the Hotel did not violate the Act; it was spoken in a jesting manner; it is reasonable to infer the remark was made in the course of a general discussion among the group in a social setting; there was no indication the employees were intimidated or coerced by the

[1] Read 1982 after all further date references omitting the year.

[2] Those employed in the Hotel's restaurant operations.

[3] Debbie Anderson and Bill Granville.

[4] The complaint alleged, the answer admitted, and I find at all pertinent times Hughes was a supervisor and agent of the Hotel acting on its behalf within the meaning of Sec. 2 of the Act.

remark; and the occasions when the remarks were made were isolated.[5]

I therefore shall recommend dismissal of those portions of the complaint alleging by Hughes' remarks the Hotel violated the Act.

3. The alleged Housley interrogation and impression of surveillance

Beginning in September, the Hotel conducted monthly meetings of employees on a departmental basis regarding employee-employer relations, hotel policies and procedures, employee training and the like. A meeting of all the employees in its restaurant operation (the La Brasserie) was scheduled and held on December 15. The meeting was chaired by Restaurant Manager Bill Fox. Other management personnel attending were Darlene Housley, director of personnel; Samantha Graff, hotel manager; Raul Diaz, assistant restaurant manager; Steve Martin, food and beverage director; Joseph Nagle, assistant food and beverage director; and possibly Charles Hughes, the executive chef, and William Marsagia, the bar manager.[6]

Fox spoke briefly and turned the meeting over to Housley. Housley talked at some length. She stated the Hotel was aware Local 814 organizers Debbie Anderson and Bill Granville were contacting them; that a number of employees complained to her and Graff the organizers were threatening and harassing them, both by telephone and in person; that they were free to talk to the organizers if they wished, but they also could hang up the telephone if they did not wish to talk and they could call the police if they were personally harassed or contact her, and she would do whatever she could to stop the harassment. Housley made detailed comparisons between the wages and benefits provided by the Hotel and those employees of a nearby Hyatt Hotel were receiving under a collective-bargaining agreement negotiated by Local 814; commented she would like to know what Local 814's organizers were telling the employees they could get for them, and stated any employee contacting her need not fear any reprisal; that she heard Granville was offering $10 for each authorization card signed by an employee and all Local 814 wanted was their dues payments; and that the Hotel was going to review wages in January with a view to increasing wages and the Hotel intended to give out Christmas turkeys to each employee.[7] Housley also discussed the number of signed authorization cards Local 814 would need to seek representational rights and the reasons for the Hotel's recent discharge of several room service waiters.[8]

While by virtue of the above I find Housley asked the employees what the organizers were telling them the Union was going to get for them (in view of the fact she had pointed out their present wage and benefit scales were superior to those of employees represented by Local 814 at a nearby hotel), I also find she assured the employees they had nothing to fear by coming and telling her. Thus, Housley's "interrogation" neither conveyed a threat of reprisal nor a promise of benefit, nor was a solicitation to inform on other employees' union activities, and in any event contained a specific assurance of no reprisal; thus it did not violate the Act.[9]

Nor do I find Housley's specific identification of the union organizers or her statement she knew they and employees had been in contact as sufficient evidentiary support for a finding by those remarks she gave the employees the impression the Hotel was maintaining a surveillance of its employees' union activities, since she clearly conveyed the message she derived that information from employees who contacted her and Graff to register complaints of theats and of harassment by those organizers; her remarks, in this context, neither were calculated nor reasonably may be construed as conveyance of the impression the Hotel was maintaining a surveillance of the employees' union activities, and thus did not violate the Act.[10]

4. The alleged Martin threat

Both Martin and Housley corroborated testimony by employee witnesses that Martin buttressed Housley's statement, in discussing employee benefits, that the Hotel's employees were receiving 6 days of paid sick leave per year while the Local 814-represented employees at Hyatt received none, by commenting at the last hotel at which Martin was employed, the Beverly Hilton, the union-represented employees there did not receive any sick leave benefits.[11]

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[5] *Wyman-Gordon Co. v. NLRB*, 108 LRRM 2085 (1st Cir. 1981); *Federal Mogul Corp. v. NLRB*, 566 F.2d 1245 (5th Cir. 1978); *Penasquitos Village v. NLRB*, 565 F.2d 1074 (9th Cir. 1977); *Browning-Ferris Industries*, 259 NLRB 60 (1982); *Philo Lumber*, 229 NLRB 210 (1977); *Tre-Vill, Inc.*, 225 NLRB 1259 (1976).

[6] The complaint alleged, the answer admitted, and I find at all pertinent times Fox, Housley, Graff, and Martin were supervisors and agents of the Hotel acting on its behalf within the meaning of Sec. 2 of the Act.

[7] These references (to a wage package and distribution of turkeys) were neither alleged in the complaint nor cited by the General Counsel as violative of the Act, so I make no finding with respect thereto. *John J. Roche & Co.*, 231 NLRB 1082 (1977).

[8] These findings are based on the testimony of employees John Karas, Patricia Smiley, John Tolisano, and David Sanishen, plus that of Housley and Graff. Where the testimony of Housley and Graff conflicts with that of the four employee witnesses concerning Housley's statement about wanting to know what the organizers were promising and employees contacting her, the testimony of the latter is credited; the four impresed me with their recall of those remarks (particularly Tolisano, who made detailed notes as Housley spoke and committed her remarks to memory). Graff was vague in her recollection of what occurred at the meeting; Martin likewise was either vague, did not recall, or failed to testify to Housley's remarks; and none of the numerous other management representatives and employees present at the meeting were called to testify. I do not find the credibility of the employee witnesses weakened by the facts their pretrial affidavits contain substantially identical language, since this may readily be attributed to the fact the same person wrote all four affidavits and undoubtedly found it convenient to utilize the same language in describing the same incidents.

[9] *Holiday Inn of Santa Maria*, 259 NLRB 649, 662 (1981); *Excavation-Construction v. NLRB*, 660 F.2d 1015; *Madison Kipp Co.*, 240 NLRB 879, 884 (1979).

[10] *Brooks Shoe Mfg. Co.*, 259 NLRB 488, 492 (1981); *Century Moving*, 251 NLRB 674, 676 (1980); *Tartan Marine Co.*, 247 NLRB 646 (1980); *Pedro's Restaurant*, 246 NLRB 567, 574 (1979).

[11] I credit Martin's testimony to that effect; he was convincing in his testimony no paid sick leave was given to the Hilton employees.

Having so credited Martin's testimony, I discredit the employee witnesses' testimony Martin stated if they chose union representation, their sick leave benefit would be reduced from 6 to 3 days.

I therefore find and conclude the Hotel did not violate the Act by Martin's truthful statement corroborating Housley's report that Local 814's contracts in the area did not provide the sick leave benefits currently enjoyed by the Hotel's employees.

CONCLUSIONS OF LAW

1. At all pertinent times the Hotel was an employer engaged in commerce in a business affecting commerce, and Local 814 was a labor organization within the meaning of Section 2 of the Act.

2. At all pertinent times Hughes, Housley, and Martin were supervisors and agents of the Hotel acting on its behalf within the meaning of Section 2 of the Act.

3. The Hotel did not violate the Act as alleged in the complaint.

On the basis of the foregoing findings of fact and conclusions of law and on the entire record, I recommend the issuance of the following[12]

ORDER

The complaint shall be, and is, dismissed in its entirety.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.